

**SUBSTITUTE DECLARATION OF MICHAEL M. EVANS  
UNDER RULE 132**

1. I, Michael M. Evans, hereby declare that Lewis M. Evans (hereinafter "Lewis") and I are co-owners of Bartile Roofs, Inc. and its licensor, Evans Brothers Investments, a company of the state of Utah that owns certain trademarks, patents, and patent applications; I have a residence at 232 East 1875 North, Centerville, Utah 84014; and I am a co-inventor of the claimed subject matter of U.S. Patent Application Serial No. 10/725,991, filed December 2, 2003 and entitled AGED ROOFING TILE SYSTEM. industry, as shown below.

2. Evans Brothers Investments owns patents and patent applications directed to roofing tiles, including the instant patent application, under all of which Bartile manufactures concrete, extruded tile as the exclusive licensee.

3. I further declare that Bartile has been a manufacturer of roofing tiles since 1942.

4. Lewis and I have been involved in the tile business for 43 and 30 years, respectively. Thus, I am aware of its history, familiar with the prior art cited by the examiner, and the invention recited in claims 1-14 and 17-62. Tile made in accordance with claims 1-14 and 17-62 has been commercially much more successful than any other tile made by Bartile, as demonstrated hereinbelow, due substantially exclusively to the methods of the claimed invention, not other factors such as marketing efforts, which have actually been largely absent. Likewise, tile made in accordance with claims 1-14 and 17-62 appears to have met an art recognized, persistent, long felt, unmet need in the roofing and tile industry as shown hereinbelow.

5. An art recognized problem has existed for at least decades, and Bartile and others have sought unsuccessfully to satisfy the need for roofing tiles having the mottled, variegated look of aged tiles now achieved by practicing the invention of claims 1-14 and 17-62. An incomplete substitute for a solution is tile having a mixture of multiple colors of base material formed into a tile to provide some variation of color, but such techniques developed over the past few decades at Bartile still lacked the texture, color, and appearance achieved by claims 1-14 and 17-62, looking like tiles aged for decades or centuries with moss and lichen growing thereon.

6. The need persisted, as sales of the foregoing, incomplete, substitute solution have continued for decades while only approximating some aspects of the needed roofing, yet not all. One may even consider the need unmet since the latter end of the industrial revolution, when mass production made asphalt shingles, tile, wood shakes, and wood shingles available but very predictable products from rapid manufacturing by machine.

7. This is exemplified by a customer whose neighbors recommended a Bartile roof such as the neighbor had, yet who insisted that the foregoing substitute solution, tile with a mixed color base, lacked the color schemes, the shadowing of the textures above the tile face, the shapes of the medallions of lichen and moss available from naturally aged tile and in accordance with the invention of claims 1-14 and 17-62.

8. For example, the customer delayed the replacement of their roof, because no roofing product could match the look of their old wooden shakes with moss and lichens distributed about in a quaint and random pattern over several decades; in accordance with the instant invention, Bartile obtained several of the actual shakes from the old roof and developed a custom color, pattern, and overall appearance that matched the look of the old roof, a look that was not possible to duplicate in any other technology known to us in the tile industry.

9. Another customer reported that he saw a house roofed with the tile of the instant invention and called Bartile to find out if they knew of the type of roof, or if they made such a roofing product; in speaking with Bartile, his description of the details of the roof, the neighborhood, and the address location described Lewis' own house, and he requested a roof that looked exactly like it and purchased one forthwith.

10. Another customer actually brought rocks to the Bartile facility asking if it would be possible to replicate the look of colors and patterns formed by the rock with its scattered, colorful, aging lichen colonies, which Bartile did with a custom tile made in accordance with the invention.

11. A builder, Jim Brasher approached Bartile about helping to develop such a tile because he was trying to achieve the 300-year-old appearance of actual European country homes; he reported that he had been searching in Europe and the U.S. for over three years without success to find a roofing product or a manufacturer able to provide that appearance as manufactured, and found that those in the industry recognized the demand but satisfied it only partially with expensive, limited, recycled tiles, leaving the need for a production tile with the ancient look unmet and the problem unsolved. Thus, the only means to satisfy the need failed to provide the actual satisfaction of need as a tile with the aged look at the time of manufacture at a cost comparable to other tiles at manufacture. Lacking 300 years to wait to achieve the appearance; together, he worked with us to experiment to find a process and materials to re-create that appearance in a new tile in accordance with the instant invention of claims 1-14 and 17-62.

12. Another customer requested and was provided with tiles made in accordance with the instant invention wherein at least one of the accent colors of the medallions was selected as an arbitrary color matching and drawing out the color of the exterior stucco wall of the house on which it was to be installed, thus creating a product not available from any other manufacturer.

13. Thus, in the tile industry, a demand for a factory-produced tile, at a reasonable cost comparable to other roofing products such as conventional tile, yet having the look of very old tile, has existed unmet by available techniques, such as those of the prior art cited by the examiner, for at least the multiple past decades of Bartile's existence, and objectively since about the turn of the 19<sup>th</sup> to the 20<sup>th</sup> century as repeatable, predictable, mass production tiles became readily available at reasonable prices. Likewise, the foregoing shows unusual commercial success.

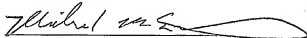
14. Moreover, commercial success of tiles in accordance with claims 1-14 and 17-62 has been unprecedented, in the 66 years that Bartile has been in the business of making and selling roofing tile. Bartile has both created and competed against hundreds of tile designs in a substantially stable industry characterized by its lack of dramatic changes in technology, marketing, or the like. However, in the few years since the filing of the instant patent application and introduction of this tile, this new tile has been extremely successful, largely by word of mouth with almost no advertising until recently. This tile has been much more successful than any other tile in Bartile's line, now representing a disproportionately high twenty percent (20%) of Bartile's volume of tile shipped and a more disproportionate forty percent (40%) of its profit mostly from word-of-mouth advertising and inquiries directed to homeowners having such roofs installed, such as those shown in the attached exhibit A from a recent Bartile catalog.

15. The Shills reference (U.S. Patent No. 4,748,471) is assigned to Monier Roof Tile Inc., which advertises its tiles, which I have inspected both in published information and as actual tiles distributed by Monier, installed, and removed from such installations, which tiles appear to be manufactured in accordance with the methods and apparatus disclosed in Shills, and examples of which tiles appear to be shown in Monier advertising pieces attached hereto as Exhibits B, C, and D; as can be seen from the exhibits these tiles do not replicate, teach, nor otherwise suggest the methods and products achieved by the instant invention of claims 1-14 and 17-62.

16. The foregoing evidence of commercial success and satisfaction of a persistent, art-recognized, long-felt, unmet need demonstrates the success of tiles made in accordance with claims 1-14 and 17-62 to be a direct result of the nonobviousness and novelty thereof.

17. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Signed at Centerville, Utah this 27<sup>th</sup> day of December, 2008  
City State Month

  
Michael M. Evans